TABLE OF CONTENTS

FO 2373258

VOLUME I

AUDIO VIDEO TRACKING SHEET

PERSONNEL INVESTIGATION FORM

INVESTIGATIVE SUMMARY

INTERVIEW TRANSCRIPTS

Involved Employee Deputy [redacted] # [redacted] (IAB Chapman/ Homicide)

Involved Employee Deputy Edward Martinez # [redacted] (IAB Chapman/ Homicide)

Involved Employee Deputy [redacted] # [redacted] (IAB Chapman/ Homicide)

Involved Employee Deputy Miguel Ruiz # [redacted] (IAB Chapman/ Homicide)

Involved Employee Sergeant John Davoren [redacted] (IAB Chapman/ Homicide)

Witness Deputy Edgar Bonilla [redacted] (IAB Chapman/ Homicide)

Witness Deputy David Brewer # [redacted] (IAB Chapman/ Homicide)

Witness [redacted] / Sergeant Davoren (Converted Video-Prior to UOF)

Witness [redacted] Homicide Interview (St. Francis Hospital)

Witness [redacted] / [redacted] Homicide Interview (Attorney Sweeney)

LACF Captain Kevin Ysais

LACF Engineer Josh Rubenstein

LACF Fireman Dustin Moreno

LACF Paramedic Kameron Harris

LACF Paramedic Paul Payne

TABLE OF CONTENTS

FO 2373258

VOLUME II

EXHIBITS

MISCELLANEOUS DOCUMENTS

MEMORANDUM

TO: CAPTAIN STEVEN KATZ
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: In-Custody Death of Brian Pickett
J.S.I.D. File #15-0009
L.A.S.D. File #015-00252-2134-339

DATE: October 26, 2016

The Justice System Integrity Division of the Los Angeles County District Attorney's Office (LADA) has completed its review of the January 6, 2015, in-custody death of Brian Pickett. We have concluded that Los Angeles County Sheriff's (LASD) Deputies [redacted] Edward Martinez, [redacted] and Miguel Ruiz used legally justified force in subduing Pickett.

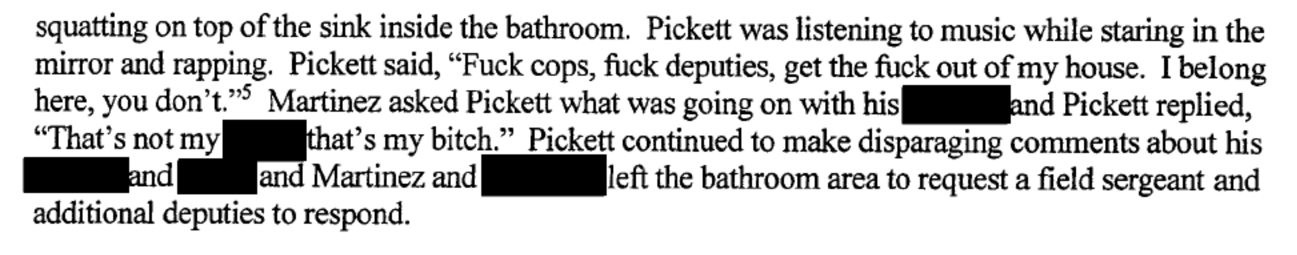
The District Attorney's Command Center was notified of the in-custody death at approximately 11:47 p.m., on January 6, 2015. The District Attorney Response Team responded to the location. They were given a briefing regarding the circumstances of the incident and a walk-through of the scene.

The following analysis is based on investigative reports and witness statements submitted to this office by LASD Sergeants Richard Biddle and Barry Hall. The voluntary statements of Deputies [redacted] Martinez, [redacted] and Ruiz were considered in this analysis.

FACTUAL ANALYSIS

On January 6, 2015, Deputies Edward Martinez and [redacted] responded to a radio call of a family disturbance at [redacted] in the City of [redacted][1] Martinez and [redacted] arrived and spoke with [redacted] and [redacted] inside of the residence.[2] As the deputies spoke with [redacted] and [redacted] they could hear Pickett yelling out from the back of the house.[3] [redacted] explained that Picket had been acting "crazy" all day and had threatened to kill [redacted] and [redacted] Martinez and [redacted] walked down the hallway towards the rear of the house and found Pickett

[1] The radio call stated that there was a disturbance and the resident, [redacted] wanted the deputies to ask her [redacted] Brian Picket, to leave the residence and that he was possibly under the influence of drugs.
[redacted] is Pickett's [redacted] and [redacted] is his [redacted] Martinez and [redacted] had prior contacts with Pickett. Pickett was twenty-six years old at the time of the incident.
[3] Martinez said Pickett sounded agitated and was screaming out random statements.
[redacted] said Pickett had been using PCP and methamphetamine, and had threatened to physically assault and kill them.


squatting on top of the sink inside the bathroom. Pickett was listening to music while staring in the mirror and rapping. Pickett said, "Fuck cops, fuck deputies, get the fuck out of my house. I belong here, you don't."[5] Martinez asked Pickett what was going on with his [redacted] and Pickett replied, "That's not my [redacted] that's my bitch." Pickett continued to make disparaging comments about his [redacted] and [redacted] and Martinez and [redacted] left the bathroom area to request a field sergeant and additional deputies to respond.

Martinez spoke with [redacted] again to determine whether she felt Pickett's threats were credible. [redacted] said she felt the threats were credible and that she was scared of Pickett. [redacted] also said that she was fearful of Pickett because he told her that he had smoked phencyclidine (PCP) and used both methamphetamine and cocaine. [redacted] was uncertain whether Pickett had any weapons, but suspected that he had an undiagnosed mental illness.[6] Martinez decided he was going to arrest Pickett for criminal threats, a violation of Penal Code section 422, and waited for the additional units to arrive. Additional deputies arrived and Sergeant John Davoren interviewed [redacted] again prior to contacting Pickett. [redacted] told the deputies that Pickett had been acting irrational all day, that he had threatened to kill her and [redacted] and that she was in fear for her life. [redacted] added that Pickett had assaulted her and [redacted] in the past, and that he had fought with deputies in previous incidents in which he was tased.[7]

Martinez, [redacted] and Ruiz went to the bathroom and found that Pickett had gotten off of the sink and was standing in front of the mirror.[8] Pickett appeared more agitated than before and continued to yell.[9] Martinez told Pickett to place his hands behind his back and to step out of the bathroom so they could speak with him. Martinez also told Picket that he would be tased if he did not comply. Pickett told Martinez to "get the fuck out of my house" and said he did not need to step outside to talk to him. Martinez again told Picket to step outside so the deputies could speak with him. Martinez also advised Pickett to put his hands behind his back and to walk backwards or he would be tased. Pickett, who had been looking at Martinez in the mirror, clenched his fist, became rigid and abruptly turned towards the deputies. Believing that Pickett was becoming assaultive and was going to physically attack the deputies, [redacted] deployed the Taser at Pickett's upper torso. Two Taser darts struck Pickett in the chest area, but had little effect on him.[10] After being struck with the Taser darts, Pickett continued to clench his fists and moved them up and down. Believing the deputies were still in danger of Pickett assaulting them, [redacted] allowed the Taser to cycle past

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[5] Martinez and [redacted] believed that Pickett was under the influence of a stimulant based upon his agitation, rambling speech and squatting on the sink.

[6] [redacted] did not mention during the conversation with Martinez, or during the previous conversation with Martinez and [redacted] that Pickett had a pre-existing physical or heart condition.

[7] Davoren video-taped his interview of [redacted] told Davoren that she did not believe Pickett had any weapons. Martinez and [redacted] had prior contacts with Pickett; no force was used in the previous incidents. A Taser was deployed on Pickett in a June 8, 2014 incident in which Pickett was eventually committed pursuant to Welfare and Institutions Code section 5150.

[8] Martinez and [redacted] stood in the hallway outside the bathroom, approximately four feet away from Pickett.

[9] [redacted] and Ruiz also said that Pickett appeared to be under the influence of PCP or methamphetamine.

[10] Martinez also said he believed Pickett was about to charge at the deputies.

the initial five second sequence. Picket then turned and stumbled facedown into the bathtub.[11] Pickett raised his arms and extended his hands forward as if to brace his fall and kicked his legs as he remained face down. [redacted] and Ruiz rushed in and tried to get control of Pickett's hands, while Pickett yelled that the officers were not going to get him. Pickett flailed his arms and kicked his legs and feet as Martinez grabbed his ankles and pulled him into the hallway. [redacted] told Pickett to stop resisting several times, but Pickett tried to prevent [redacted] from handcuffing him by keeping his hands pinned underneath his body. Martinez pinned Pickett's legs back while [redacted] and Ruiz managed to pull his arms and hands free and eventually handcuffed him. Pickett kicked his legs around and Ruiz applied a hobble to his ankles to prevent him from injuring a deputy. Once the handcuffs and hobble were applied, Pickett stopped resisting the deputies and was carried to the living room and placed on the floor on his left side.[12] Pickett did not appear to be in distress and did not have any visible injuries.[13] [redacted] confirmed that Pickett was breathing and had a pulse. [redacted] then exited the residence and requested via radio that paramedics respond to the location at 9:48 p.m..[14] [redacted] Martinez and [redacted] monitored Pickett's breathing and pulse prior to the arrival of paramedics. Pickett appeared to be breathing, as his chest was rising and falling and he had a pulse at his carotid artery.[15]

Paramedics arrived at 9:54 p.m. and began treating Pickett. Paramedics determined that Pickett did not have a pulse and was in cardiac arrest. Pickett's handcuffs and the hobble were removed and the paramedics began to perform cardiopulmonary resuscitation (CPR) and other medical intervention. Pickett failed to respond and was transported to St. Francis Hospital. Pickett was pronounced dead from cardiopulmonary arrest at 10:39 p.m. by Dr. Karen Chang.

Statement of [redacted]

[redacted] was interviewed in the presence of her attorney, John Sweeney. [redacted] said Pickett was acting especially unruly, erratic and out of control. [redacted] was unable to communicate with Pickett and she called the Sheriff's station to help her get Pickett placed on a mental evaluation hold and transferred to a mental health treatment facility.[16] [redacted] recognized Martinez and [redacted] from previous incidents in which she called the police on Pickett and told them that Pickett was acting aggressively and had threatened her and [redacted] asked the deputies to take Pickett to the hospital

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[11] Martinez said that Pickett did not hit his head when he stumbled into the tub, however [redacted] said that Pickett hit his head on the tub or the wall. [redacted] believed that Pickett slipped on a mat on the bathroom floor when he turned towards the deputies. [redacted] and Ruiz did not address whether Pickett hit his head, however neither saw any injuries on Pickett. The Taser records show that the Taser initially cycled for twenty-nine seconds. Six seconds later, the Taser cycled for another five seconds.

[12] [redacted] estimated the time from when Pickett was tased until he was handcuffed and placed on the living room floor was fifteen to twenty seconds. Davoren estimated the time as one minute to a minute and a half and Deputy Edgar Bonilla, who was present but did not have physical contact with Pickett, estimated eight to ten seconds.

[13] Martinez, [redacted] Ruiz and [redacted] did not see any injuries on Pickett. [redacted] said he saw a small amount of blood on the bathroom floor, but did not see where it came from. Bonilla said he observed a small "nick" above Pickett's left eye.

[14] Martinez said he also requested that paramedics respond. The deputies said that the departmental protocol was to request paramedics in all incidents when the Taser was deployed, regardless of whether the individual suffered injuries. The LASD Use of Force policy states that every individual shall be transported to a medical facility for examination whenever there is an application of the Taser.

[15] [redacted] said Pickett was taking light breaths, had his eyes closed and appeared to be calm.

[16] According to [redacted] Pickett had previous mental health commitments and had been recently diagnosed as bipolar. Pickett had been prescribed medications but rarely took them.

for a psychological hold and told them that Pickett said he had used PCP, methamphetamine and cocaine.

Martinez and [redacted] went to the bathroom to speak with Pickett, and he yelled and cursed at them to leave the house. Martinez returned to her and said he would need to request additional deputies. Three to five deputies arrived and [redacted] spoke with the sergeant on video. [redacted] told the sergeant that Pickett had threatened to physically harm or kill her and [redacted] and gave the deputies permission to enter her house to contact Pickett. The deputies advised [redacted] that they might have to deploy the Taser on Pickett, and [redacted] replied, "Well, you guys have done that to him before, is there something else you can do?"[17]

The deputies entered the house while [redacted] and [redacted] remained in the front yard. [redacted] could not hear what was being said, but she heard noises consistent with a struggle moving into the hallway area. The deputies dragged Pickett, who was handcuffed, into the living room and placed him on his left side. [redacted] saw blood and a clear liquid on the floor around Pickett's head.[18] Martinez patted Pickett on the shoulder, checked his pulse and told [redacted] that Pickett was just dazed. [redacted] said that Pickett had been tased before and was able to speak afterwards. [redacted] feared something was wrong because the deputies were acting weird and would not speak with her. [redacted] asked about the blood on the floor and was told that Pickett struck his head when he fell in the tub.[19]

Paramedics responded and immediately performed CPR on Pickett while he was still handcuffed. Pickett was subsequently transported to St. Francis Hospital.

[redacted] told investigators that Pickett did not have any physical conditions such as heart disease or asthma and that he regularly exercised and worked out.

Statement of [redacted]

[redacted] was interviewed in the presence of her attorney, John Sweeney. [redacted] statement was consistent with [redacted] in every material respect except for the following. [redacted] said that she was not fearful that Pickett would physically assault her. [redacted] had questioned Pickett about his threats to punch her, and he denied that he would actually harm her. When [redacted] saw Pickett lying on the living room floor, she could not see his face but believed he was unconscious and not breathing. [redacted] asked the deputies if Pickett was fine and she was told that he was just having problems breathing. [redacted] was speaking on her cell phone with her [redacted] and she described Pickett's condition to him. At her [redacted] request, [redacted] asked the deputies if Pickett needed to be resuscitated, and the deputies said, "No, he is ok." Additionally, [redacted] observed the deputies to constantly shake Pickett to ascertain whether he was okay.

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[17] [redacted] told investigators that Pickett had been tased three times in the year preceding the incident. Records submitted in the investigation show the only incident in which a Taser was deployed on Pickett was during the June 8, 2014 incident, however Pickett was also committed pursuant to Welfare and Institutions Code section 5150 on April 8, 2014 and October 18, 2014.

[18] There is no evidence of blood or any other fluid depicted on the floor of the living room in the area where Pickett was treated.

[19] [redacted] produced a photograph of a dent in the handicap rail along the wall of the bathtub. Ford said the dent was not on the rail prior to the incident. A small dent can be seen on the rail in the LASD photographs taken on the night of the incident.

[redacted] stated that Martinez and [redacted] were present during the June 8, 2014 incident in which Pickett was tased, however departmental records do not document that either deputy was present.

LAFD Paramedic/Firefighter Paul Payne

Paramedic Payne was on duty with Paramedic Moises Serrato when they responded to a call of a "Shock" and the use of a Taser at [redacted] Pickett was laying on his side inside the residence and two deputies were standing over him. Serrato immediately assessed Pickett and determined that he did not have a pulse and was in cardiac arrest. The deputies were asked to remove the handcuffs and the paramedics began their procedure for cardiac arrest.

The deputies said that Pickett had resisted them, had been tased and had received a few "contact stuns."[20] The deputies also told Payne that Pickett had a pulse, which had been checked two to three minutes prior to the arrival of the paramedics, and that he had been breathing in a shallow manner. Based on the description provided by the deputies, Payne determined that Pickett had agonal breathing and that he had stopped breathing just before the paramedic's arrival.[21] The paramedics continued to render aid but Pickett did not respond. Pickett was transported to St. Francis Hospital and his condition deteriorated while in the ambulance.[22]

The deputies advised the paramedics that other than the Taser, no force was used. The paramedics conducted a full inspection of Pickett's body and found no signs of trauma or injury.

Postmortem Examination

On January 19, 2015, Deputy Medical Examiners Ajay Panchal and Julia Chu performed a postmortem examination of Pickett's remains. Two Taser darts, located in the center of Pickett's chest and below his left rib, were removed prior to the examination. The examination revealed two puncture wounds from the Taser darts, a small laceration above his left eye, ecchymosis on the left side of his chest, an abrasion on the left side of his face, several red-brown areas on his chest and an abrasion on his left shoulder.[23] Pickett did not have injuries to his head, and had numerous scars on his back.[24] Two circular marks on the center of his chest were initially believed to be "drive stun" marks, however upon further review, and with the assistance of Chief Medical Examiner-Coroner, Mark Fajardo, the Taser in "drive stun" mode was excluded as the cause of the marks.[25]

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[20] Pickett's medical records from St. Francis Hospital contain several references to Pickett being tased and then a "dry stun" or "dry shock" being administered. The records also show that this information was provided by the emergency medical services personnel. Martinez said Pickett had not been drive stunned, and that he told the paramedics that Pickett had only been tased. [redacted] said Pickett had not been drive stunned, and that he had not spoken with the paramedics.

[21] Agonal breathing is a muscular response to the body attempting to draw in air.

[22] Pickett's condition deteriorated from ventricular fibrillation, which meant his heart still had electrical activity but exhibited a pulseless rhythm, to asystole. Asystole means the heart has ceased activity and precedes death.

[23] Ecchymosis is discoloration of the skin from bruising.

[24] Pickett's [redacted] said the scars may have been injuries suffered during a September 2014 tasing incident in Arizona.

[25] Panchal consulted with Chief Medical Examiner-Coroner Mark Fajardo prior to issuing the final opinion. Upon examining the actual Taser used, and Taser International documentation, Fajardo and Panchal formed the opinion that although the marks appeared consistent with a "drive stun" mode, the marks were too close together to have been caused by the Taser in "drive stun", "dart cartridge removed" or "dart cartridge attached" mode.

Dr. Panchal attributed Pickett's cause of death to the effects of methamphetamine associated with probable excited delirium. Pickett's death occurred due to the ingestion of methamphetamine, but Panchal could not exclude the effects of the Taser during restraint maneuvers as a contributing factor in the cause of his death. The autopsy also revealed that Pickett suffered from significant preexisting medical conditions that contributed to his death, including hypertrophic heart disease, hemoglobin C trait, and spastic airway disease suggestive of asthma. The manner of death was "undetermined".

The toxicological examination showed a level of methamphetamine in the blood specimens. The levels were in the range where toxic effects can be seen. Marijuana was also present in the range where toxic effects can be seen. Pickett's blood was tested for PCP, however it was not detected in his system.

Additionally, there was no evidence of injuries to Pickett's neck, chest and abdominal cavity, musculoskeletal, respiratory, heart, head and central nervous systems.

LEGAL ANALYSIS

A peace officer may legally arrest someone if he has probable cause to make the arrest. (Penal Code section 836a; CALCRIM No. 2670).

A peace officer may use reasonable force to arrest or detain someone, to prevent escape, to overcome resistance, or in self-defense. (Penal Code section 835a; CALCRIM No. 2670).

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect an arrest or to prevent escape or to overcome resistance. (Penal Code section 835a).

In *Graham v. Connor* (1989) 490 U.S. 386, 396-397, the Court held that use of force cases are to be reviewed using an objective standard of the reasonable officer:

> "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. [Citation] . . . With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: 'Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers,' [Citation] violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation."

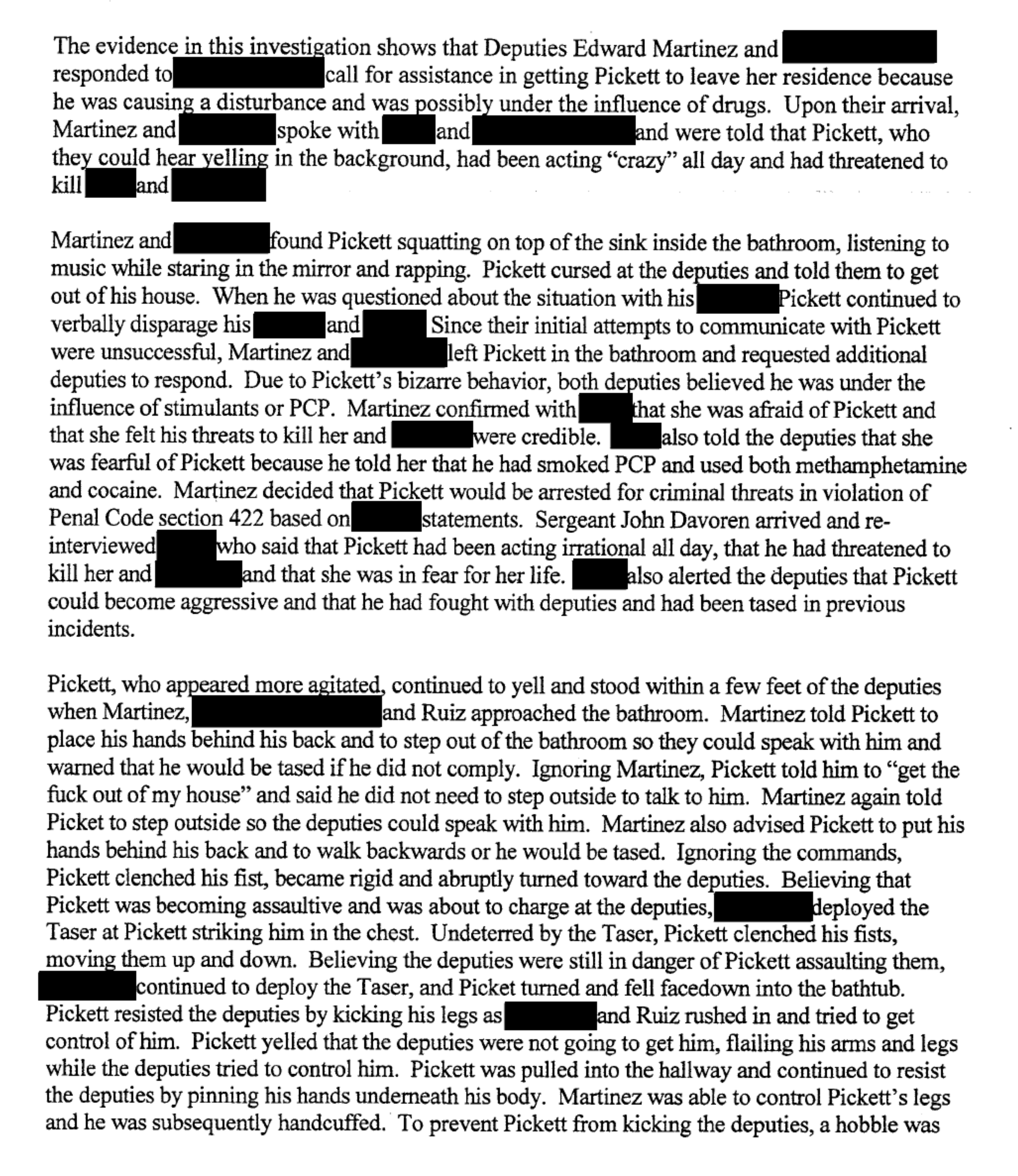
The use of a Taser constitutes an intermediate, significant level of force that must be justified by the governmental interest involved. *Bryan v. McPherson* (2010) 630 F.3d. 805, 826.[26] Use of a

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[26] In *Bryan*, supra, the officer used a Taser in dart-mode which, when deployed correctly, has a greater impact on the subject than when used in drive stun, or contact, mode. The cases cited by *Bryan* do not distinguish between dart and drive stun modes.

Taser is subject to the same reasonableness test as the use of force generally. See, *Hinton v. City of Elwood* (1993) 997 F.2d 774, 777 (not excessive for officers to use an "electrical stun gun" on a man after grabbing him and wrestling him to the ground, because of his active resistance to arrest.) The use of a Taser falls within the category of non-lethal force. *Bryan*, supra, 630 F.3d at 825; See also, *Lewis v. Downey* (2004) 581 F.3d 467, 475.

CONCLUSION



The evidence in this investigation shows that Deputies Edward Martinez and [redacted] responded to [redacted] call for assistance in getting Pickett to leave her residence because he was causing a disturbance and was possibly under the influence of drugs. Upon their arrival, Martinez and [redacted] spoke with [redacted] and [redacted] and were told that Pickett, who they could hear yelling in the background, had been acting "crazy" all day and had threatened to kill [redacted] and [redacted]

Martinez and [redacted] found Pickett squatting on top of the sink inside the bathroom, listening to music while staring in the mirror and rapping. Pickett cursed at the deputies and told them to get out of his house. When he was questioned about the situation with his [redacted] Pickett continued to verbally disparage his [redacted] and [redacted] Since their initial attempts to communicate with Pickett were unsuccessful, Martinez and [redacted] left Pickett in the bathroom and requested additional deputies to respond. Due to Pickett's bizarre behavior, both deputies believed he was under the influence of stimulants or PCP. Martinez confirmed with [redacted] that she was afraid of Pickett and that she felt his threats to kill her and [redacted] were credible. [redacted] also told the deputies that she was fearful of Pickett because he told her that he had smoked PCP and used both methamphetamine and cocaine. Martinez decided that Pickett would be arrested for criminal threats in violation of Penal Code section 422 based on [redacted] statements. Sergeant John Davoren arrived and re-interviewed [redacted] who said that Pickett had been acting irrational all day, that he had threatened to kill her and [redacted] and that she was in fear for her life. [redacted] also alerted the deputies that Pickett could become aggressive and that he had fought with deputies and had been tased in previous incidents.

Pickett, who appeared more agitated, continued to yell and stood within a few feet of the deputies when Martinez, [redacted] and Ruiz approached the bathroom. Martinez told Pickett to place his hands behind his back and to step out of the bathroom so they could speak with him and warned that he would be tased if he did not comply. Ignoring Martinez, Pickett told him to "get the fuck out of my house" and said he did not need to step outside to talk to him. Martinez again told Picket to step outside so the deputies could speak with him. Martinez also advised Pickett to put his hands behind his back and to walk backwards or he would be tased. Ignoring the commands, Pickett clenched his fist, became rigid and abruptly turned toward the deputies. Believing that Pickett was becoming assaultive and was about to charge at the deputies, [redacted] deployed the Taser at Pickett striking him in the chest. Undeterred by the Taser, Pickett clenched his fists, moving them up and down. Believing the deputies were still in danger of Pickett assaulting them, [redacted] continued to deploy the Taser, and Picket turned and fell facedown into the bathtub. Pickett resisted the deputies by kicking his legs as [redacted] and Ruiz rushed in and tried to get control of him. Pickett yelled that the deputies were not going to get him, flailing his arms and legs while the deputies tried to control him. Pickett was pulled into the hallway and continued to resist the deputies by pinning his hands underneath his body. Martinez was able to control Pickett's legs and he was subsequently handcuffed. To prevent Pickett from kicking the deputies, a hobble was

applied to his ankles. He was carried to the living room and placed on the floor on his left side. Pickett did not appear to be in distress and did not have any visible injuries. Multiple deputies monitored Pickett and confirmed that he was breathing and had a pulse.

The deputies believed that Pickett was under the influence of a stimulant and PCP, and had information that he had fought with deputies in the past and had been tased. Pickett had been non-compliant to repeated requests to step out of the bathroom and to place his hands behind his back. He repeatedly ignored lawful orders, and [redacted] in reasonable fear that Pickett was about to charge at and assault the deputies, resorted to deploying the Taser. From the time that the Taser was deployed until Pickett was handcuffed and subdued lasted a brief period of time. The evidence shows that after the Taser was deployed, the deputies employed only the force necessary in order to restrain and subdue him. Pickett flailed his arms and legs, as he was pulled out of the bathtub and into the hallway, then pinned his hands beneath his body to prevent deputies from handcuffing him. Deputies were able to quickly handcuff him, and the hobble was applied to his ankles to prevent injury to the deputies from Pickett's continued physical resistance and possible kicks. The force used by the officers was justified in view of the resistance offered by Pickett.

The deputies did not tie Pickett's ankle restraint to his handcuffs and immediately upon carrying Pickett into the living room and turning him on his side, monitored his breathing and summoned the paramedics. The deputies did not strike Pickett with their hands, feet, or baton, and other than the small "nick" observed by Deputy Edgar Bonilla above Pickett's left eye, neither the other deputies or the paramedics observed any injuries on Pickett. The post-mortem examination of Pickett revealed that there was no force applied beyond the minimum reasonable force that was used to gain control and custody of Pickett. The autopsy showed that there was no evidence of injury to his neck, chest and abdominal cavity, musculoskeletal, respiratory, heart, head and central nervous systems. Although the manner of death was ultimately classified as undetermined, and the effects of electromechanical disruption device effects during restraint maneuvers could not be excluded as a contributing factor, Pickett's death was ultimately attributed to the ingestion of methamphetamine, and the effects of methamphetamine associated with probable excited delirium. Additionally, Pickett's pre-existing, and apparently undiagnosed medical conditions, including hypertrophic heart disease, hemoglobin C trait, and spastic airway disease suggestive of asthma were contributing factors.

Based upon the evidence in this case, we find that Deputies [redacted] Edward Martinez, [redacted] and Miguel Ruiz applied lawful force in detaining Brian Pickett and are not criminally responsible for his death. We are closing our file and will take no further action in this manner.